

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CONNER DEVELOPMENT COMPANY,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 79-188

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a \$250 civil penalty for an outdoor fire allegedly in violation of Section 8.02(3) of respondent's Regulation I, having come on regularly for formal hearing on the 7th day of March, 1980 in Seattle, Washington, and appellant Conner Development Company represented by its superintendent, Charles Conner, and respondent, Puget Sound Air Pollution Control Agency, appearing through its attorney, Keith D. McGoffin with William A. Harrison, hearing officer presiding, and the Board having considered the exhibits, records and files herein, and having reviewed the Proposed

1 Order of the presiding officer mailed to the parties on the 23rd day
2 of April, 1980, and more than twenty days having elapsed from said
3 service; and

4 The Board having received no exceptions to said Proposed Order and
5 the Board being fully advised in the premises; NOW THEREFORE,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
7 Order containing Findings of Fact, Conclusions of Law and Order dated
8 the 22nd day of March, 1980, and incorporated by reference herein and
9 attached hereto as Exhibit A, are adopted and hereby entered as the
10 Board's Final Findings of Fact, Conclusions of Law and Order herein.

11 DATED this 21st day of May, 1980.

12 POLLUTION CONTROL HEARINGS BOARD

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15 NAT W. WASHINGTON, Chairman

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17 DAVID AKANA, Member

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PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250 civil penalty for an outdoor fire allegedly in violation of respondent's Section 8.02(3) of Regulation I, came on for hearing before the Pollution Control Hearings Board, Chris Smith, Member, convened at Seattle, Washington on March 7, 1980. Hearing Examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

EXHIBIT A

1 Appellant appeared by its superintendent, Charles Conner.

2 Respondent appeared by its attorney, Megan Foley.

3 Witnesses were sworn and testified. Exhibits were examined. From
4 testimony heard and exhibits examined, the Pollution Control Hearings
5 Board makes these

6 FINDINGS OF FACT

7 I

8 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
9 a certified copy of its Regulation I containing respondent's
10 regulations and amendments thereto, of which official notice is taken.

11 II

12 Appellant, Conner Development Company, is an established housing
13 developer. At the time in question it owned some 20 building lots in
14 a wide radius around Seattle. Among them was lot No. 47 of a
15 subdivision in Issaquah, which is the lot involved here. Both that
16 lot and the adjacent one, which appellant did not own, were vacant at
17 the time in question. Appellant had a home under construction some 3
18 blocks away from lot No. 47. It is appellant's usual practice to haul
19 away construction debris. Other developers had homes under
20 construction in the same subdivision.

21 III

22 On August 22, 1979, a complaint was made by a citizen to King
23 County Fire District No. 10, whose officer investigated. He found an
24 unattended fire in progress, preponderantly on appellant's lot No. 47
25 and containing siding, perforated plastic pipe, insulation, paint
26 cans, cardboard, lumber and other construction debris. It was

27 PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

approximately 10' x 20 feet in expanse and 3 feet high. During his 30-45 minutes at the site, the fire district officer asked several persons whether they knew who had caused the fire. All denied any knowledge. Respondent's inspector arrived at the request of the fire district and observed the fire. He asked several persons if they knew who had caused the fire. All denied any knowledge. No attempt was made to extinguish the fire. Thereafter, respondent mailed a Notice of Violation to appellant. Appellant later received a Notice of Civil Penalty citing respondent's Section 8.02(3) of Regulation I and assessing a civil penalty of \$250. From this appellant appeals.

IV

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to these

CONCLUSIONS OF LAW

I

Respondent's Section 8.02(3) of Regulation I provides:

It shall be unlawful for any person to cause or allow any outdoor fire . . .

(3) containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics or any substance other than natural vegetation which normally emits dense smoke or obnoxious odors . . .

The fire in question contained materials prohibited by the above.

II

Respondent's Section 8.04(b) states:

It shall be prima facie evidence that the person who owns or controls property on which an outdoor fire occurs has caused or allowed said outdoor fire.

1 Appellant owned and controlled the land upon which a fire containing
2 prohibited materials occurred. Appellant has not rebutted the presumption
3 that it caused or allowed the fire. Appellant violated respondent's
4 Section 8.02(3) of Regulation I on August 22, 1979.

5 III

6 The fire involved in this matter is at odds with appellant's usual
7 practice of hauling away construction debris for disposal, and there exists
8 no direct evidence that appellant caused or allowed the fire. While the
9 violation must be upheld the penalty should be suspended.

10 IV

11 Any Finding of Fact which should be deemed a Conclusion of Law is
12 hereby adopted as such.

13 From these Conclusions the Board enters this

14 ORDER

15 The \$250 civil penalty is affirmed; provided however, that it is
16 suspended on condition that appellant not violate respondent's Regulations
17 for a period of two years from the date of appellant's receipt of this
18 Order.

19 DONE at Lacey, Washington this 22nd day of April, 1980.

20 POLLUTION CONTROL HEARINGS BOARD

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23 WILLIAM A. HARRISON
24 Presiding Officer
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26 PROPOSED FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER